

FILED DEC 17 '04 15:30 USDC RI

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

IN RE:	MARC J. PEARLMAN	:	Chapter 7
		:	BK No. 04-12257
	Debtor	:	
<hr/>		:	
SAUNDERS REAL ESTATE CORPORATION,		:	
as agent for BOSTON DEVELOPMENT		:	
COMPANY LIMITED PARTNERSHIP 39/45		:	
NEWBURY		:	Adv. Pro. No.
Plaintiff		:	
VS.		:	
<hr/>		:	
MARK J. PEARLMAN a/k/a MARC J.		:	
PEARLMAN		:	
<hr/>		:	

**SAUNDERS REAL ESTATE CORPORATION'S COMPLAINT OBJECTING
TO DISCHARGE PURSUANT TO 11 U.S.C §727**

Plaintiff, Saunders Real Estate Corporation ("Saunders"), objects to the discharge of Defendant, Marc J. Pearlman ("Pearlman"), and in support thereof states as follows:

1. Saunders, which holds a judgment lien against Pearlman's residence and business property, is a secured creditor of the Debtor. Other than the creditor holding the mortgage on his residence, Saunders is Pearlman's largest creditor.

2. Pearlman filed a Chapter 7 bankruptcy petition on July 14, 2004.

3. This adversary proceeding arises out of and relates to Pearlman's Chapter 7 case. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157(b)(2)(J) and 1334. This is a

core proceeding under 28 U.S.C. § 157(b)(2)(A).

4. Venue is appropriate in this district pursuant to 11 U.S.C. § 1409, as this is the district in which the bankruptcy proceeding is pending.

5. This is an adversary proceeding objecting to the discharge of the Defendant pursuant to Bankruptcy Rules 4004(d) and 7001(4).

6. In the late 1980's, Pearlman and his wife, Anna Maria Pearlman, formed Newbury Kitchen and Bath, a retail service provider located on Newbury Street in Boston, Massachusetts and formerly located at 63 Warren Avenue in East Providence, Rhode Island.

7. Pearlman claims to have contributed or loaned to Newbury Kitchen and Bath the proceeds of a \$211,250.00 loan secured by a mortgage on his residence, but has produced no records to document this contribution or loan.

8. Debtor claims to work full time for Newbury Kitchen and Bath but does not receive a salary from Newbury Kitchen and Bath.

9. Pearlman admits that Newbury Kitchen and Bath pays the mortgage payment on his residence, as well as other personal expenses, and provides him with an automobile.

10. Pearlman asserts in his bankruptcy schedules that all of his real and personal property is exempt.

11. Pearlman states in his bankruptcy schedules that the only income he and his spouse receive is \$1,600.00 per month in Social Security payments. Pearlman claims in his statement of financial affairs that he received no income in 2003 and "unknown" income in 2002.

12. Pearlman claims in his bankruptcy schedules that he has \$1,750.00 in monthly expenses.

13. Pearlman admitted at the meeting of creditors held pursuant to 11 U.S.C. § 341 (the "creditors' meeting") that some of the expenses listed in Schedule J of his bankruptcy schedules were joint with his wife or were, in fact, payment of his wife's debts.

14. Pearlman testified at the creditors meeting that he does not have documents evidencing his financial transactions with Newbury Kitchen and Bath.

15. Although Saunders requested documents from Pearlman during the course of litigation brought to enforce its judgment, Pearlman has failed to produce competent evidence that would enable Saunders to reasonably ascertain information about his financial condition and material business transactions.

COUNT I

16. Each of the foregoing allegations is incorporated by reference.

17. Pearlman failed to keep or preserve recorded information, including books, documents, records and papers with respect to his personal financial affairs and business transactions from which his financial condition and material business transactions can be determined.

18. Pearlman's failure to maintain adequate books and records was not justified under the circumstances.

WHEREFORE, Saunders respectfully requests this Honorable Court order and decree that Pearlman be denied a discharge pursuant to 11 U.S.C. §727(a)(3) and grant such other and further relief as justice may require.

SAUNDERS REAL ESTATE CORPORATION,

By its Attorneys,

WINOGRAD, SHINE & ZACKS, P.C.

By



Melissa M. Horne, Esq. (#5291)

Lynn K. Gifford, Esq. (#6648)

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Providence, RI 02903

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Facsimile: (401) 272-5728

Dated:

12/17/04

RI Bankr. Form R

See, RI LBR - 7003-1(b)

FILED DEC 17 2004 15:35:52

B104 ADVERSARY PROCEEDING COVERSHEET (Rev.2/92) (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)	
PLAINTIFFS Saunders Real Estate Corporation, as agent for Boston Development Company Limited Partnership 39/48 Newbury		DEFENDANTS Mark J. Pearlman a/k/a Marc J. Pearlman	
ATTORNEYS (Firm Name, Address & Telephone) Melissa M. Horne, Esq. Winograd, Shine & Zacks, P.C. 123 Dyer Street, Providence, RI (401) 273-8300		ATTORNEYS (If Known) Peter Berman, Esq. Raskin & Berman, 116 Manning Street Providence, RI (401) 421-1363	
PARTY (Check one box only) <input type="checkbox"/> 1. U.S. Plaintiff <input type="checkbox"/> 2. U.S. Defendant <input checked="" type="checkbox"/> U.S. Not a Party			
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Objecting to Discharge pursuant to 11 U.S.C. Section 727			
NATURE OF SUIT (Check the one most appropriate box only)			
<div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> <input type="checkbox"/> 454 To Recover Money or Property <input type="checkbox"/> 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property <input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property <input checked="" type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. §727 </div> <div style="width: 30%;"> <input type="checkbox"/> 455 To revoke an order of confirmation of a Ch. 11, Ch. 12, or Ch. 13 Plan <input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. §523 <input type="checkbox"/> 434 To obtain an injunction or other equitable relief <input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan </div> <div style="width: 30%;"> <input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing causes of action <input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court <input type="checkbox"/> 498 Other (specify </div> </div>			
ORIGIN OF PROCEEDINGS (Check one box only) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed Proceeding <input type="checkbox"/> 4 Reinstated Or Reopened <input type="checkbox"/> 5 Transferred from Another Bankruptcy Court			CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P.23 <input type="checkbox"/>
DEMAND	NEAREST THOUSAND \$	OTHER RELIEF SOUGHT Denial of Discharge	JURY <input type="checkbox"/> DEMAND
BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES			
NAME OF DEBTOR Marc J. Pearlman		BANKRUPTCY CASE NO. 04-12257	
DISTRICT IN WHICH CASE IS PENDING Rhode Island	DIVISIONAL OFFICE	NAME OF JUDGE Votolato	
RELATED ADVERSARY PROCEEDING (IF ANY)			
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.	
DISTRICT	DIVISIONAL OFFICE	NAME OF JUDGE	
FILING FEE (Check one box only) <input checked="" type="checkbox"/> FEE ATTACHED <input type="checkbox"/> FEE NOT REQUIRED <input type="checkbox"/> FEE IS DEFERRED			
DATE December 17, 2004	PRINT NAME Melissa M. Horne, Esq.	SIGNATURE OF ATTORNEY (OR PLAINTIFF) <i>Melissa Horne</i>	